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COUNTY OF LOS ANGELES and DEPUTY TRAVIS KELLY
(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Plaintiffs,

v.

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

Defendants.

Case No.: 2:22-cv-05367 RGK(MAAx)

**DEFENDANTS' REPLY TO
PLAINTIFF'S RESPONSE TO
STATEMENT OF PURPORTED
UNCONVERTED FACTS AND
CONCLUSION OF LAW IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: June 26, 2023

Time: 9:00 a.m.

Crtrm: 850

Action Filed: August 3, 2022

Pretrial Conference: July 10, 2023

Trial Date: July 25, 2023

Assigned to:

Hon. R. Gary Klausner, District Judge
Courtroom 850

TO THIS HONORABLE COURT AND TO ALL PARTIES OF RECORD:

PLEASE TAKE NOTICE that Defendants COUNTY OF LOS ANGELES and
SERGEANT TRAVIS KELLY (hereinafter “Defendants”) present the following Reply
to Plaintiff’s in support of their Motion for an order granting Partial Summary Judgment
or, pursuant to Federal Rule of Civil Procedure Rule 56.

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UNCONTROVERTED FACTS	PLAINTIFF'S RESPONSE	DEFENDANTS' RESPONSE
1. On or about September 24, 2021, Plaintiff Joshua Assiff ("Plaintiff"), a 21-year-old black male, was pulled over and subsequently arrested by a male Caucasian motorcycle officer ("Defendant Kelly").	UNDISPUTED	UNDISPUTED

1	2. Defendant Kelly initiated	DISPUTED	Irrelevant,
2	the traffic stop at the	There was no probable cause	immaterial, lacks
3	intersection of Soledad	for the stop in the first place.	foundation -
4	Canyon Road and Sierra	Plaintiff made a legal turn on a	Plaintiff was not
5	Highway because he observed	green light. (Exhibit 1, Assiff	arrested for a traffic
6	a black GMC Terrain (driven	Depo 46:20-21; 54:7-9; 60:19-	violation; rather, he
7	by Plaintiff) make a right-	20; 101:20) As the light was	was arrested for
8	hand turn without stopping for	green, there were no	violation of
9	the steady circular red traffic	pedestrians in the crosswalk.	California <i>Penal</i>
10	signal (violation of California	(Assiff Dec. 2:1-3) Note:	<i>Code</i> sections 69
11	<i>Vehicle Code</i> section	Defendant Kelly made no	(resisting an
12	21453(b)) and without	mention of the pedestrians in	officer) and 243(b)
13	yielding to pedestrians in the	the crosswalk until after he	(battery against the
14	crosswalk (violation of	needed to justify his unlawful	person of an
15	California <i>Vehicle Code</i>	use of force. (Exhibit B,	officer). As such,
16	section 21950(a)).	Defendant Kelly's BWC	his subjective belief
17		generally)	about the legality of
18			the traffic stop is
19			irrelevant and
20			immaterial to the
21			Court's inquiry on
22			this claim.
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1 3. The incident was captured
2 on video by Defendant Kelly
3 once he activated his non-
4 department issued personal
5 Body Worn Camera ("BWC")
6 as he was dismounting his
7 motorcycle at the outset of the
8 traffic stop.

UNDISPUTED

UNDISPUTED

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	4. From the beginning of the traffic stop, Plaintiff was argumentative with Sergeant Kelly about the reason for the traffic stop, and contradicted Defendant Kelly's statement that Plaintiff made a right-hand turn without stopping for the red traffic signal.	DISPUTED Plaintiff was polite and courteous to Defendant Kelly, always referring him as either "officer" or "sir." Plaintiff stated his position that the light was in fact green in response to Defendant Kelly's false assertions that the light was red. (See, Exhibit B, Defendant Kelly's BWC)	Lacks foundation - The evidence shows that Plaintiff was argumentative with Sergeant Kelly about the reason for the traffic stop, and contradicted Defendant Kelly's statement that Plaintiff made a right-hand turn without stopping for the red traffic signal. In response to Fact No. 7, Plaintiff admits to "cross-talk" with Defendant Kelly.
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1 2 3 4 5 6 7 8 9 10 11 12 13	5. While Plaintiff was speaking, Defendant Kelly could smell a strong odor of burnt marijuana emitting from his vehicle.	DISPUTED There was no marijuana smell. It was 7:50 a.m. in the morning and Plaintiff was on his way to Basketball practice. Plaintiff did not ingest marijuana that morning. Plaintiff did not smoke marijuana that morning. Plaintiff had never smoked marijuana in the Vehicle. (Exhibit 1, Assiff Depo 39:21-23, 41:9-11, 131:6-8; Assiff Dec. 2:13-16)	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's perception, knowledge or belief.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	6. Due to Plaintiff's agitation, rapid speech, and odor of marijuana, Defendant Kelly believed Plaintiff may have been under the influence of marijuana.	DISPUTED Plaintiff was not agitated and his speech was not rapid. (See, Exhibit B, Defendant Kelly's BWC generally) There was no marijuana smell. It was 7:50 a.m. in the morning and Plaintiff was on his way to Basketball practice. Plaintiff did not ingest marijuana that morning. Plaintiff did not smoke marijuana that morning. Plaintiff had never smoked marijuana in the Vehicle. (Exhibit 1, Assiff Depo 39:21-23, 41:9-11, 131:6-8; Assiff Dec. 2:13-16)	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's perception, knowledge or belief.
18 19 20 21 22 23 24 25 26 27 28	7. Defendant Kelly requested Plaintiff's driver's license three times in the first approximately 45 seconds of the BWC.	DISPUTED Defendant Kelly did not request the driver's license three times. The first claimed request was interrupted by cross-talk and never completed. (See, Exhibit B, Defendant Kelly's BWC at 07:52:58)	Irrelevant, immaterial, lacks foundation – whether Plaintiff heard the request is immaterial to whether the request was communicated.

<p>1 8. In response, Plaintiff 2 continued arguing with 3 Defendant Kelly and did not 4 provide his driver's license. 5 6 7 8 9 10 11 12 13 14 15 16 17</p>	<p>DISPUTED Once Plaintiff was requested to produce his driver's license for the first time, Plaintiff immediately complied and reached for his wallet. (See, Exhibit B, Defendant Kelly's BWC 07:53:25) Even Defendant Kelly in his deposition conceded that Plaintiff was in the process of producing his driver's licenses when Defendant Kelly, not Plaintiff, re-engaged Plaintiff in the debate over the color of the light. (Ferlauto Dec. 2:10- 13)</p>	<p>Lacks foundation - The evidence shows that Plaintiff never handed over his driver's license to Defendant Kelly.</p>
<p>18 9. At the third request for 19 Plaintiff's driver's license, 20 Sergeant Kelly warned 21 Plaintiff to "give me your 22 driver's license or you're 23 going to jail." 24 25 26 27 28</p>	<p>DISPUTED Defendant Kelly did not request the driver's license three times. The first claimed request was interrupted by cross-talk and never completed. (See, Exhibit B, Defendant Kelly's BWC at 07:52:58)</p>	<p>Irrelevant, immaterial, lacks foundation – whether Plaintiff heard the request is immaterial to whether the request was communicated.</p>

<p>10. In response to the third request for Plaintiff’s driver’s license, Plaintiff stated “let me grab my phone,” and began to reach towards the center console of the vehicle with his right hand.</p>	<p>DISPUTED</p> <p>Defendant Kelly did not request the driver’s license three times. The first claimed request was interrupted by cross-talk and never completed. (See, Exhibit B, Defendant Kelly’s BWC at 07:52:58)</p> <p>Plaintiff stated his intention to record the interaction on his mobile phone after Defendant Kelly irrationally threatened to throw Plaintiff in jail 42 seconds into Traffic stop for a minor traffic infraction. (See, Exhibit B, Defendant Kelly’s BWC at 07:53:33-37)</p>	<p>Irrelevant, immaterial, lacks foundation – whether Plaintiff heard the request is immaterial to whether the request was communicated. Plaintiff’s subjective agreement with Defendant Kelly’s request is immaterial.</p>
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1 11. Immediately thereafter,
2 Defendant Kelly opened
3 Plaintiff's driver's door and
4 ordered Plaintiff to exit the
5 vehicle. Plaintiff responded
6 "no I'm not."

UNDISPUTED
However, it should be noted
that this all happened
simultaneous with Defendant
Kelly grabbing Plaintiff's arm
to prevent Plaintiff from
recording the interaction on his
mobile phone. (See, Exhibit B,
Defendant Kelly's BWC at
07:53:40)

UNDISPUTED
The evidence
Defendant Kelly
never asked
Plaintiff to stop
recording, never
grabbed for
Plaintiff's hand
which held the
phone.

Lacks foundation -
Plaintiff cannot
competently testify
to Defendant
Kelly's intention.

<p>12. Between approximately 45 seconds and 1 minute and 20 seconds into the BWC footage, Defendant Kelly initiated physical contact with Plaintiff's left wrist to pull him out of the vehicle, which Plaintiff physically resisted by pulling his arm away; Defendant Kelly's report on the incident indicates that he felt Plaintiff kick him during this brief struggle.</p>	<p>DISPUTED</p> <p>Plaintiff did not kick Defendant Kelly (Assiff Dec. 2:17-20; Exhibit 1, Assiff Depo. 145:9-13 "There was no – there was no fight. It wasn't me, you know, besides me pulling back my arm, none of that. While all that was going on, I didn't kick, I didn't punch, nothing." See also, Exhibit B, Defendant Kelly's BWC, Kelly grabs for Plaintiff's cell phone and no kick is visible, 07:53:40) Apart from this "phantom kick" not being visible on the video record, it is implausible to the point of being impossible that it took place when Defendant Kelly claims during the fleeting moment when Plaintiff's legs are not visible, given</p>	<p>Irrelevant, immaterial, lacks foundation – Plaintiff's subject intent is immaterial to whether Defendant Kelly felt Plaintiff's kick.</p> <p>Plaintiff admitted he physically resisted Defendant Kelly's every attempt to remove him from the vehicle.</p>
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	<p>Plaintiff's 6 foot 8 inch frame, and the fact that his long legs are seen wedged deep within the floorboard area seconds latter. Furthermore, Defendant Kelly conceded in his deposition the he did not see the kick. His motorcycle pants were thickly padded and it may have been Plaintiff's knee with which he came contact. (See, Ferlauto Dec. 2:14-16)</p> <p>Basically, Defendant Kelly fabricated this claimed assault and battery on an officer to justify, after the fact, his unlawful use of force against Plaintiff.</p>	
<p>13. Defendant Kelly then stepped back slightly from Plaintiff, radioed for backup, and yelled out for assistance to Deputy Joshua Clark, who was in the same parking lot.</p>	UNDISPUTED	UNDISPUTED

14. Plaintiff began to video record the incident on his cellphone.	UNDISPUTED	UNDISPUTED
15. Defendant Kelly then ordered Plaintiff to exit the vehicle several times, and warned about the use of pepper spray if Plaintiff failed to comply.	UNDISPUTED However, it should be noted that after Defendant Kelly threatened to pepper spray Plaintiff only 73 seconds into a traffic stop for a minor traffic infraction, Plaintiff requested to speak with Defendant Kelly's supervisor. (See, Exhibit B, Defendant Kelly's BWC at 07:54:06)	UNDISPUTED Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's intention.

16. Around 1 minute and 20 seconds into the BWC footage, Defendant Kelly deployed his pepper-spray against Plaintiff in a 1-2 second burst, and initiated second physical contact with Plaintiff to pull him out of the vehicle.	UNDISPUTED However, it should be noted that Defendant Kelly deployed the pepper spray in immediate response to Plaintiff's request to speak with Defendant Kelly's supervisor. The request to speak to the supervisor was at 07:54:06, the pepper spray was deployed at 07:54:07 and Defendant Kelly can be heard angrily shouting "I AM THE SUPERVISOR" as he sprayed the pepper spray into Plaintiff's face. (See, Exhibit B, Defendant Kelly's BWC at 07:54:06-7)	UNDISPUTED Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's intention.
17. At about 1 minute and 25 seconds into the BWC footage, a second Deputy (identified as Deputy Joshua Clark) can be seen attempting to aid Defendant Kelly with Plaintiff to pull him out of the vehicle.	UNDISPUTED	UNDISPUTED

18. Defendant Kelly reported that he saw Plaintiff punch Deputy Clark in the chest, and he punched Plaintiff in the face with his left fist.	DISPUTED Plaintiff did not punch Deputy Clark in the chest. (Assiff Dec. 2:17-20; Exhibit 1, Assiff Depo. 145:9-13 “There was no – there was no fight. It wasn’t me, you know, besides me pulling back my arm, none of that. While all that was going on, I didn’t kick, I didn’t punch, nothing.” See, also Defendant Kelly’s BWC, no punch by Plaintiff is ever visible. Furthermore, Defendant Kelly in his deposition conceded that he could not see the punch on the video and had trouble locating where in the video it allegedly occurred. (Ferlauto Dec. 2:17-19)	Irrelevant, immaterial, lacks foundation – Plaintiff’s subject intent is immaterial to whether Defendant Kelly saw Plaintiff punch Deputy Clark. Plaintiff admitted he physically resisted the deputies’ every attempt to remove him from the vehicle. Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly’s intention.
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1		Again, Defendant Kelly	
2		fabricated this claimed assault	
3		and battery on an officer to	
4		justify, after the fact, his	
5		unlawful use of force against	
6		Plaintiff.	
7			
8	19. The physical struggle	DISPUTED	Lacks foundation –
9	between the two Deputies and	Plaintiff’s resistance was	both the evidence
10	Plaintiff continued for about	passive. (Defendant’s Exhibit	and Plaintiff’s own
11	55 seconds while plaintiff was	G, Expert Report of Jeffrey J.	testimony establish
12	still seated in the driver’s seat	Nobel, p. 18, 44) As can be	that he physically
13	of his vehicle actively	seen from Exhibit B,	resisted every
14	resisting.	Defendant Kelly’s BWC,	attempt to remove
15		generally, Plaintiff passively	him from his
16		resisting the deputies’ efforts to	vehicle.
17		remove him from the vehicle,	
18		the “struggle” was one sided as	
19		the deputies pepper sprayed,	
20		punched and choked Plaintiff.	
21		(Assiff Dec. 2:17-20; Exhibit 1,	
22		Assiff Depo. 145:9-13	
23	20. At about 2 minutes and 20	UNDISPUTED	UNDISPUTED
24	seconds, a third Deputy		
25	(Deputy Garrett Gallegos)		
26	arrived on the scene.		

21. Shortly thereafter, Deputy Gallegos deployed his Taser to Plaintiff's back through direct contact.	UNDISPUTED	UNDISPUTED
22. At about 2 minutes and 27 seconds, the three Deputies were able to bring Plaintiff out of his vehicle and to the ground next to it.	UNDISPUTED	UNDISPUTED
23. Once on the ground, Plaintiff continued kicking and pulling his arms away despite commands to get onto his stomach and stop resisting.	DISPUTED Plaintiff was obviously involuntarily thrashing about as a result of being pepper sprayed in the face a tased in the back. He did not kick or punch. (Assiff Dec. 2:17-20; Exhibit 1, Assiff Depo. 145:9-13 "There was no – there was no fight. It wasn't me, you know, besides me pulling back my arm, none of that. While all that was going on, I didn't kick, I didn't punch, nothing.")	Lacks foundation – both the evidence and Plaintiff's own testimony establish that he physically resisted every attempt to remove him from his vehicle. Plaintiff testified he has no recollection of the incident after he was Tased, and he cannot therefore competently testify as to what occurred from that point on.

1 2 3 4 5 6 7	24. At about 2 minutes and 36 seconds, Deputy Gallegos again deployed his Taser to Plaintiff in an attempt to gain compliance.	UNDISPUTED as to the facts that the Taser was deployed, disputed that is was to gain compliance. It was an unlawful use of force.	Lacks foundation - Plaintiff cannot competently testify to Deputy Gallegos' intention in deploying the Taser.
8 9 10 11 12 13 14	25. Defendant Kelly ordered Plaintiff to roll onto his stomach and place his hands behind his back, and warned that the Taser would be used again if he did not comply.	UNDISPUTED	UNDISPUTED

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	26. Plaintiff then rolled onto his stomach, stopped resisting and was placed in handcuffs.	DISPUTED Plaintiff was not resisted while on the ground (See, Additional Fact 117)	Lacks foundation – the video evidence shows Plaintiff continued physical resistance after he was removed from his vehicle. Plaintiff testified he has no recollection of the incident after he was Tased, and he cannot therefore competently testify as to what occurred from that point on.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	27. Based on the foregoing, Defendant Kelly believed there was probable cause to arrest Plaintiff for violation of California <i>Penal Code</i> sections 69 (resisting an officer) and 243(b) (battery against the person of an officer).	DISPUTED There was no probable cause for the stop in the first place. Plaintiff made a legal turn on a green light. (Exhibit 1, Assiff Depo 46:20-21; 54:7-9; 60:19-20; 101:20) As the light was green, there were no pedestrians in the crosswalk. (Assiff Dec. 2:1-3) There was no marijuana smell. It was 7:50 a.m. in the morning and Plaintiff was on his way to Basketball practice. Plaintiff did not ingest marijuana that morning. Plaintiff did not smoke marijuana that morning. Plaintiff had never smoked marijuana in the Vehicle. (Assiff Dec. 2:7-8, 13-16; Exhibit 1, Assiff Depo 39:21-23, 41:9-11, 131:6-8)	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's intention, perception, knowledge or belief.
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Plaintiff did not kick Defendant Kelly. Plaintiff did not punch Deputy Clark. (Assiff Dec. 2:17- 20; Exhibit 1, Assiff Depo. 145:9-13 “There was no – there was no fight. It wasn’t me, you know, besides me pulling back my arm, none of that. While all that was going on, I didn’t kick, I didn’t punch, nothing.” See, also Defendant Kelly’s BWC, Kelly grabs for Plaintiff’s cell phone and no kick is visible, 7:53:40) Apart from this “phantom kick” not being visible on the video record, it is implausible to the point of being impossible that it took place when Defendant Kelly claims during the fleeting moment when Plaintiff’s legs are not visible, given Plaintiff’s 6 foot 8 inch frame, and the fact that his long legs are seen wedged deep within the floorboard area seconds latter.

Furthermore, Defendant Kelly conceded in his deposition the he did not see the kick. His motorcycle pants were thickly padded and it may have been Plaintiff's knee with which he came into contact. (See, Ferlauto Dec. 2:14-16) Basically, Defendant Kelly fabricated this claimed assault and battery on an officer to justify, after the fact, his unlawful use of force against Plaintiff.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	28. On September 25, 2021, a judicial officer of the State of California found that there was probable cause for Plaintiff's subject arrest for California <i>Penal Code</i> sections 69 (resisting an officer) and 243(b) (battery against the person of an officer).	DISPUTED This alleged "finding" is objectionable, irrelevant, and inadmissible. The judicial officer had no personal knowledge of the incident and his alleged finding on a one-paged ex parte e-signed booking form, is not entitled to any collateral estoppel effect. The issue was never litigated. Plaintiff was not present. Plaintiff was not represented. Plaintiff was not given any opportunity to be heard. Only Defendant Kelly's short one-sided declaration was even considered. Also, this "proceeding" did not end with a final judgment on the merits. Plaintiff was never convicted of anything.	Irrelevant, immaterial – Plaintiff's dispute with the judicial process has no bearing on the fact of probable cause determination.
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1 *There was not even a*
2 *preliminary hearing where*
3 *Plaintiff might have had an*
4 *opportunity to be heard. There*
5 *was no preliminary hearing,*
6 *because there were no criminal*
7 *proceedings. This was a DA*
8 *reject – no charges were even*
9 *brought by the District*
10 *Attorney. There was not even*
11 *probable cause for the traffic*
12 *stop itself. (See, Response to*
13 *Purported Uncontroverted Fact*
14 *27, above, and Additional Facts*
15 *101-103,below)*
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<p>29. Based upon his education, training, experience, and review of materials to date, Defendants’ disclosed expert, Michael Gray, opines that there was probable cause for Plaintiff’s arrests.</p>	<p>DISPUTED</p> <p>This purported expert opinion on “probable cause” is improper inadmissible and irrelevant. Legal conclusions (i.e., opinions on an ultimate issue of law) are not “helpful” and therefore should be excluded. “Each courtroom comes equipped with a ‘legal expert’ called a judge, and it is his or her province alone to instruct the jury on the relevant legal Standards.” [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060</p>	<p>Plaintiff’s dispute is immaterial, as the purpose of Mr. Gray’s declaration is to assist the Court’s inquiry as to the lawful conduct of a reasonable law enforcement officer in Defendant Kelly’s position. Mr. Gray makes no conclusions of law – he merely opines that a reasonable law enforcement officer in Defendant Kelly’s position would believe there was probable cause for Plaintiff’s arrest for violation of California <i>Penal Code</i> sections 69 (resisting an officer) and 243(b) (battering an</p>
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	<p>It is error to permit an expert to testify in terms having specialized legal meaning distinct from ordinary usage. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i>, supra, 112 F3d at 1215; <i>Woods v. Lecureux</i> (6th Cir. 1997) 110 F3d 1215, 1219-1220—in 42 USC § 1983 civil rights action against prison warden, expert witness prohibited from using term “deliberately indifferent” to describe defendant's conduct]There was not even probable cause for the traffic stop itself. (See, Response to Purported Uncontroverted Fact 27, above, and Additional Facts 101-103,below)</p>	officer).
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1	30. Plaintiff alleges that he	UNDISPUTED	UNDISPUTED
2	was pulled over and		
3	subsequently arrested for no		
4	apparent reason and without		
5	probable cause.		
6	31. Plaintiff further alleges	UNDISPUTED	UNDISPUTED
7	that he was tasered, choked,		
8	pepper sprayed, beaten, and		
9	arrested, all in violation of his		
10	constitutional rights.		
11	32. As to Defendant Kelly,	UNDISPUTED	UNDISPUTED
12	Plaintiff alleges that he		
13	“acting under color or law or		
14	color of authority, deprived		
15	Plaintiff of his rights,		
16	privileges, or immunities		
17	secured by the State and		
18	Federal Constitutions, by		
19	arresting Plaintiff without		
20	probable cause and with use		
21	of excess force in violation of		
22	the Fourth and Fourteenth		
23	Amendment to the United		
24	States Constitution.”		
25			

<p>33. Defendant Kelly’s BWC footage indicates that Plaintiff both verbally and physically resisted Defendant Kelly’s detention; specifically, Plaintiff verbally argued with Sergeant Kelly regarding the legality of the traffic stop, he declined to provide his driver’s license when requested (three times) (a violation of California Vehicle Code 12951(b), a misdemeanor) and, even after he was warned that failure to do so would result in an arrest, he refused to exit the vehicle despite being ordered to do so several times.</p>	<p>DISPUTED</p> <p>See, Exhibit B, Defendant Kelly’s BWC video, generally, as well as Plaintiff’s responses to Defendants’ purported uncontroverted facts 1-26, above, and Plaintiff’s Additional Facts 101-117, below. See also, Additional Facts 118-139</p>	<p>Irrelevant, immaterial, lacks foundation – The video evidence shows Plaintiff argued with Defendant Kelly and disobeyed his verbal commands. Plaintiff admitted he physically resisted the deputies’ every attempt to remove him from the vehicle.</p>
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1 34. Citizens are aware
2 (California DMV Handbook
3 and CVC 12951(b)) that when
4 stopped by law enforcement
5 they must produce a driver's
6 license, proof of insurance
7 and vehicle registration and if
8 told to exit a vehicle they
9 must comply. Citizens are
10 generally aware they do have
11 a First Amendment right to
12 record interactions with law
13 enforcement but do not have a
14 right to interfere with the
15 officer's lawful duties or
16 commands.
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35. Plaintiff was warned that failure to do so would result in him being pepper sprayed, and he physically resisted and fought Defendant Kelly's attempts to remove him from his vehicle to effectuate an arrest a violation of <i>Penal Code</i> Section 148.	DISPUTED See, Exhibit B, Defendant Kelly's BWC video, generally, as well as Plaintiff's responses to Defendants' purported uncontroverted facts 1-26, above, and Plaintiff's Additional Facts 101-117, below. See also, Additional Facts 118-139.	Irrelevant, immaterial, lacks foundation – The video evidence shows Plaintiff argued with Defendant Kelly and disobeyed his verbal commands. Plaintiff admitted he physically resisted the deputies' every attempt to remove him from the vehicle.
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1	36. Collectively, this series of	DISPUTED	Plaintiff's dispute is
2	failures to comply and the	This purported expert opinion	immaterial, as the
3	escalation from passive to	on "probable cause" is	purpose of Mr.
4	aggressive resistance on the	improper inadmissible and	Gray's declaration
5	Plaintiff's behalf provided	irrelevant. Legal conclusions	is to assist the
6	Defendant Kelly with the	(i.e., opinions on an ultimate	Court's inquiry as
7	probable cause to lawfully	issue of law) are not "helpful"	to the lawful
8	arrest Plaintiff pursuant to	and therefore should be	conduct of a
9	California Penal Code section	excluded. "Each courtroom	reasonable law
10	836—which allows a peace	comes equipped with a 'legal	enforcement officer
11	officer to arrest a person	expert' called a judge, and it is	in Defendant
12	without a warrant if the	his or her province alone to	Kelly's position.
13	officer has probable cause to	instruct the jury on the relevant	Mr. Gray makes no
14	believe that the person to be	legal standards." [<i>Burkhart v.</i>	conclusions of law
15	arrested has committed a	<i>Washington Metropolitan Area</i>	– he merely opines
16	public offense in the officer's	<i>Transit Auth.</i> (DC Cir. 1997)	that a reasonable
17	presence.	112 F3d 1207, 1213;	law enforcement
18		<i>Nationwide Transport Finance</i>	officer in Defendant
19		<i>v. Cass Information Systems,</i>	Kelly's position
20		<i>Inc.</i> (9 th Cir. 2008) 523 F3-d	would believe there
21		1051,1058-1060	was probable cause
22			for Plaintiff's arrest
23			for violation of
24			California <i>Penal</i>
25			<i>Code</i> sections 69
26			(resisting an
27			officer) and 243(b)
28			(battering

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	<p>It is error to permit an expert to testify in terms having specialized legal meaning distinct from ordinary usage. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i>, supra, 112 F3d at 1215; <i>Woods v. Lecureux</i> (6th Cir. 1997) 110 F3d 1215, 1219-1220—in 42 USC § 1983 civil rights action against prison warden, expert witness prohibited from using term “deliberately indifferent” to describe defendant's conduct] See, Exhibit B, Defendant Kelly’s BWC video, generally, as well as Plaintiff’s responses to Defendants’ purported uncontroverted facts 1-26, above, and Plaintiff’s Additional Facts 101-117, below. See also, Additional Facts 118-139.</p>	<p>an officer).</p>
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1 2 3 4 5 6 7 8 9 10	37. Based on Plaintiff's aforementioned conduct, Defendant Kelly's conduct was objectively reasonable under the circumstances and is compliant with law enforcement training, policies, and procedures.	DISPUTED See, Exhibit B, Defendant Kelly's BWC video, generally, as well as Plaintiff's responses to Defendants' purported uncontroverted facts 1-26, above, and Plaintiff's Additional Facts 101-117, below. See also, Additional Facts 118-139.	See Defendant's response to facts 1- 26, above, and Plaintiff's Additional Facts 101-139, below.
11 12 13 14 15 16 17 18 19 20	38. Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.	UNDISPUTED However, there was no probable cause even for the stop itself. (See, Additional Facts 101-103)	UNDISPUTED See Defendant's response to Plaintiff's Additional Facts 101-103, below.

1 2 3 4 5 6 7 8 9 10	39. Defendant Kelly's conduct was not excessive force and, instead, was an appropriate degree of force, that is objectively reasonable, in light of Plaintiff's continued resistance and failure to comply with Defendant Kelly's reasonable orders.	DISPUTED See, Exhibit B, Defendant Kelly's BWC video, generally, as well as Plaintiff's responses to Defendants' purported uncontroverted facts 1-26, above, and Plaintiff's Additional Facts 101-117, below. See also, Additional Facts 118-139.	See Defendant's response to facts 1-26, above, and Plaintiff's Additional Facts 101-139, below.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	40. As to the County, Plaintiff alleges in a conclusory manner that the “County knowingly and intentionally promulgated, maintained, applied, enforced, and continued policies, customs, practices and usages... include[ing], without limitation, the employment of motorcycle and other officers to make unnecessary and unwarranted traffic stops to bully and harass African American drivers. This would include among other things, the initiation of frivolous traffic stops, arrest without probable cause, and the use of excessive force to effectuate the arrest.”	DISPUTED The allegation was not “conclusory” and in fact was found to be sufficiently specific in the Court’s ruling on Defendant’s motion to dismiss. (February 16, 2023, Docket No. 35)	The allegation is conclusory because Plaintiff maintains it, despite having no evidence to support it.
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1 41. Plaintiff cites to a 2013
2 Department of Justice, Civil
3 Rights Division's review of
4 LASD's Antelope Valley
5 stations which eventually led
6 to a legal settlement with
7 federal authorities. Plaintiff
8 alleges the Department of
9 Justice's findings regarding
10 racial profiling and
11 discriminatory traffic stops in
12 Antelope Valley are persistent
13 and ongoing recognized by
14 the Department of Justice,
15 Civil Rights Division.
16

UNDISPUTED

UNDISPUTED

1 42. However, the legal
2 settlement and findings do not
3 mention nor provide findings
4 as to LASD Santa Clarita
5 Valley station.

UNDISPUTED
However, the incident that is
the subject matter of this
lawsuit happened while
Plaintiff was traveling to the
Antelope Valley. However, it
occurred in Santa Clarita, in a
northern part of the County, but
just one Sheriff's Department
station adjacent to but south of
the actual Antelope Valley.
(Additional Fact 152)

UNDISPUTED
Plaintiff's intended
location at the time
of the traffic stop is
irrelevant.
Plaintiff concedes
the incident did not
occur in the
Antelope Valley,
but rather at a
location
approximately 45
minutes driving
distance away.
(Exhibit H, pp. 97-
98.)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	43. On or about September 24, 2021, Defendant Kelly was assigned to LASD Santa Clarita Valley station. At no point has Defendant Kelly been assigned to nor worked with LASD Antelope Valley stations, including LASD Lancaster and Palmdale stations.	UNDISPUTED However, the incident that is the subject matter of this lawsuit happened while Plaintiff was traveling to the Antelope Valley. However, it occurred in Santa Clarita, in a northern part of the County, but just one Sheriff's Department station adjacent to but south of the actual Antelope Valley. (Additional Fact 152)	UNDISPUTED Plaintiff's intended location at the time of the traffic stop is irrelevant. Plaintiff concedes the incident did not occur in the Antelope Valley, but rather at a location approximately 45 minutes driving distance away. (Exhibit H, pp. 97-98.)
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<p>44. Moreover, the DOJ’s failure to include, mention, or review LASD Santa Clarita Valley station in their study in fact suggests no pervasive, continuous, or known unconstitutional policies or practices existed or allowed for Plaintiff’s alleged constitutional violation.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060]</p> <p>Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion.</p> <p>Additional Facts 140-151, 152-156</p>	<p>The fact constitutes an expert opinion based on review of the relevant materials, training, experience and knowledge – it is not a legal conclusion opinion.</p>
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<p>45. Plaintiff has failed to provide any evidence or identify any specific policies or customs that LASD Santa Clarita Valley, Deputy's assigned station which had jurisdiction over Defendant Kelly, held or allowed which caused Plaintiff's alleged constitutional violation.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact constitutes an expert opinion based on review of the relevant materials, training, experience and knowledge – it is not a legal conclusion opinion.</p>
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1	46. The County of Los	DISPUTED	The fact constitutes
2	Angeles neither promulgates,	This is an improper expert	an expert opinion
3	maintains, nor enforces	opinion as it constitutes a legal	based on review of
4	customs or policies that	opinion on an ultimate issue of	the relevant
5	allowed for nor caused	law. [<i>Burkhart v. Washington</i>	materials, training,
6	Plaintiff injury.	<i>Metropolitan Area Transit</i>	experience and
7		<i>Auth.</i> (DC Cir. 1997) 112 F3d	knowledge – it is
8		1207, 1213; <i>Nationwide</i>	not a legal
9		<i>Transport Finance v. Cass</i>	conclusion opinion.
10		<i>Information Systems, Inc.</i> (9th	
11		Cir. 2008) 523 F3d 1051,	
12		1058-1060] Furthermore, this	
13		opinion is based upon an	
14		inadequate review of necessary	
15		evidence and thus	
16		lacks a proper foundation for	
17		this opinion. Additional Facts	
18		140-151, 152-156	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	47. The County of Los Angeles and its Sheriff's Department take steps to ensure that its deputies act lawfully and do not violate civil rights when enforcing the law.	DISPUTED This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156	The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.
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<p>48. There does not exist, nor did there exist at the time of the events underlying this action that gives rise to this litigation in September 2021, within the LASD, nor does the LASD condone, a custom, practice or policy of conducting unreasonable searches and seizures.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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<p>1 49. There has never existed 2 any policy, custom, or 3 practice of random stopping 4 of citizens without cause, nor 5 has there ever been any 6 policy, custom, or practice of 7 racial profiling or 8 discriminating against citizens 9 based on their race or 10 ethnicity. 11 12 13 14 15 16 17 18 19</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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<p>1 50. There does not exist, nor 2 did there exist at the time of 3 the events underlying this 4 action that gives rise to this 5 litigation, within the LASD, 6 nor does the LASD condone, 7 a custom, practice or policy of 8 permitting the use of 9 excessive force against any 10 person. 11 12 13 14 15 16 17 18 19</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140- 151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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<p>51. There does not exist, nor did there exist at the time of the events underlying this action that gives rise to this litigation, within the LASD, nor does the LASD condone, a custom, practice or policy of permitting unlawful arrests.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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<p>52. There does not exist, nor did there exist at the time of the events underlying this action that gives rise to this litigation, within the LASD, nor does the LASD condone, a custom, practice or policy of retaliating against citizens based on their exercise of First Amendment rights.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	53. There does not exist at the LASD, nor did there exist at the time of the events underlying this action, a custom, practice or policy of employing and retaining as deputies and other personnel who the County of Los Angeles knew or reasonably should have known had dangerous propensities for abusing their authority and/or for mistreating citizens by failing to follow written LASD policies, including by conducting unreasonable searches and seizures or using excessive force.	DISPUTED This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156	The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.
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<p>1 54. There does not exist at the</p> <p>2 LASD, nor did there exist at</p> <p>3 the time of the events</p> <p>4 underlying this action, a</p> <p>5 custom, practice or policy of</p> <p>6 inadequately supervising,</p> <p>7 training, controlling,</p> <p>8 assigning, and disciplining</p> <p>9 deputies and other personnel</p> <p>10 including who the County of</p> <p>11 Los Angeles allegedly knew,</p> <p>12 or in the exercise of</p> <p>13 reasonable care, should have</p> <p>14 known had a propensity for</p> <p>15 abusing their authority and/or</p> <p>16 for mistreating citizens by</p> <p>17 failing to follow written</p> <p>18 LASD policies, including by</p> <p>19 conducting unreasonable</p> <p>20 searches and seizures or using</p> <p>21 excessive force.</p> <p>22</p>	<p>DISPUTED</p> <p>This is an improper expert</p> <p>opinion as it constitutes a legal</p> <p>opinion on an ultimate issue of</p> <p>law. [<i>Burkhart v. Washington</i></p> <p><i>Metropolitan Area Transit</i></p> <p><i>Auth.</i> (DC Cir. 1997) 112 F3d</p> <p>1207, 1213; <i>Nationwide</i></p> <p><i>Transport Finance v. Cass</i></p> <p><i>Information Systems, Inc.</i> (9th</p> <p>Cir. 2008) 523 F3d 1051,</p> <p>1058-1060] Furthermore, this</p> <p>opinion is based upon an</p> <p>inadequate review of necessary</p> <p>evidence and thus lacks a</p> <p>proper foundation for this</p> <p>opinion. Additional Facts 140-</p> <p>151, 152-156</p>	<p>The fact is not</p> <p>supported by expert</p> <p>opinion; rather, it is</p> <p>supported by the</p> <p>Declaration of a</p> <p>Sergeant of the</p> <p>LASD who served</p> <p>as Watch</p> <p>Commander for the</p> <p>Santa Clarita Valley</p> <p>Station on the date</p> <p>of the incident; it is</p> <p>not a legal</p> <p>conclusion or</p> <p>expert opinion.</p>
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<p>55. There does not exist at the LASD, nor did there exist at the time of the events underlying this action, a custom, practice or policy of maintaining inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling alleged intentional misconduct by deputies of the LASD.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	20 21 22 23 24 25 26 27 28	<p>56. There does not exist at the LASD, nor did there exist at the time of the events underlying this action, a custom, practice or policy of failing to discipline County of Los Angeles deputies' misconduct.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	57. There does not exist at the LASD, nor did there exist at the time of the events underlying this action, a custom, practice or policy of ratifying any alleged intentional misconduct of deputies of the LASD.	DISPUTED This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140-151, 152-156	The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.
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<p>1 58. As such, there is no 2 evidence to indicate that the 3 LASD has a custom or 4 practice of violating the civil 5 rights of citizens.</p>	<p>DISPUTED</p> <p>This is an improper expert opinion as it constitutes a legal opinion on an ultimate issue of law. [<i>Burkhart v. Washington Metropolitan Area Transit Auth.</i> (DC Cir. 1997) 112 F3d 1207, 1213; <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> (9th Cir. 2008) 523 F3d 1051, 1058-1060] Furthermore, this opinion is based upon an inadequate review of necessary evidence and thus lacks a proper foundation for this opinion. Additional Facts 140- 151, 152-156</p>	<p>The fact is not supported by expert opinion; rather, it is supported by the Declaration of a Sergeant of the LASD who served as Watch Commander for the Santa Clarita Valley Station on the date of the incident; it is not a legal conclusion or expert opinion.</p>
<p>20 59. The LASD has a very 21 comprehensive Use of Force 22 manual that gives thorough 23 and specific details on the use 24 of force and the reporting of 25 such use of force.</p>	<p>UNDISPUTED</p>	<p>UNDISPUTED</p>

1 60. Defendant Kelly knew
2 that the County and LASD
3 maintained and strictly
4 enforced policies and
5 procedures regarding traffic
6 stops, as well as the use of
7 force, including de-escalation
8 procedures.
9

Lacks foundation -
Plaintiff cannot
competently testify
to Defendant
Kelly's knowledge
and intention.

See Defendant's
response to
Plaintiff's
Additional Facts
140-151.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	61. Defendant Kelly received all required LASD training concerning how to conduct traffic stops and how to appropriately respond to passive and active resistance from motorists while conducting traffic stops.	DISPUTED Defendant Kelly did not receive adequate training as he did not appropriately respond in this incident. (See, Additional Facts 118-128) 	Irrelevant – any miscommunication regarding an unrelated incident has no impact on whether Defendant Kelly received requisite LASD training. Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or any other LASD personnel's knowledge and intention.
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62. Further, Defendant Kelly received LASD training concerning de-escalation procedures that may be used while conducting these traffic stops.

DISPUTED

Defendant Kelly did not receive adequate training as he did not use any de-escalation techniques in this incident.

(See, Additional Facts 118-128)

Irrelevant – any miscommunication regarding an unrelated incident has no impact on whether Defendant Kelly received requisite LASD training.

Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or any other LASD personnel's knowledge and intention.

See Defendant's response to Plaintiff's Additional Facts 118-128

63. Nothing in Defendant Kelly's personnel history presented as concerns that would give Defendant County of Los Angeles the impression that Defendant Kelly is either unfit for duty or dismissive of relevant policies and procedures.

DISPUTED

Defendant Kelly is a bad motorcycle cop. [REDACTED]

Irrelevant, immaterial, hearsay.

Plaintiff relies on unauthenticated, hearsay complaints regarding unrelated incident.

64. Supervisor and management personnel of the LASD, who supervise and manage Defendant Kelly for The County of Los Angeles, responded appropriately in the review and handling of this incident, specifically shown in Defendant Kelly's superiors review and follow up report of the incident.

DISPUTED

Irrelevant – any miscommunication regarding an unrelated incident has no impact on whether Defendant Kelly received requisite LASD training.

Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or any other LASD personnel's knowledge and intention.

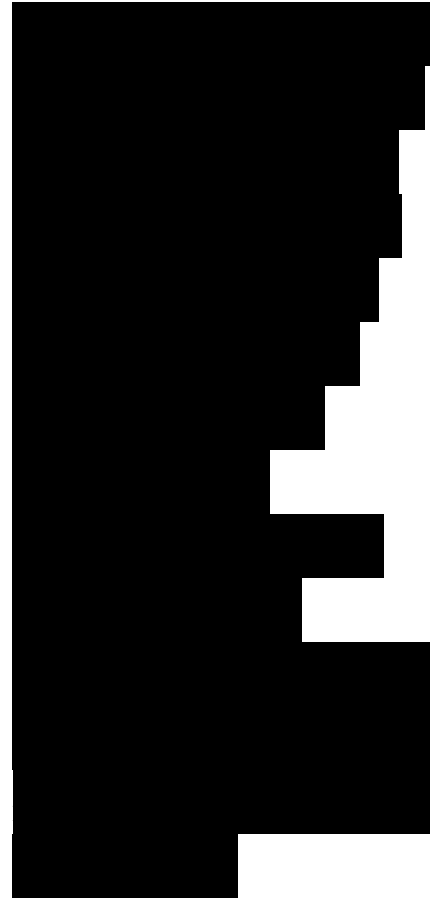
See Defendant's response to Plaintiff's Additional Facts 118-128

1 2 3 4 5 6 7 8 9 10 11 12	65. Based upon his education, training, experience, and review of materials to date, Defendants' disclosed expert, Michael Gray, opines that the County of Los Angeles responded appropriately to the incident, and; no pattern of unconstitutional acts by Defendant Kelly or the County of Los Angeles exist that caused Plaintiff injury.	PLAINTIFF DOES NOT DISPUTE THAT GRAY OPINED, BUT HIS OPINIONS ARE DISPUTED See Additional Facts 118-156	See Defendant's response to Plaintiff's Additional Facts 118-156
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<p>66. There is nothing in the record(s) reviewed that would indicate that the LASD failed to properly supervise Defendant Kelly.</p>	<p>DISPUTED</p> <p>When Plaintiff requested to speak to Defendant Kelly’s supervisor, Defendant Kelly pepper sprayed Plaintiff in the face and claimed to be his own supervisor. Thus, Defendant Kelly apparently had no supervision whatsoever. (See, Additional Fact 113)</p>	<p>Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly’s or any other LASD personnel’s knowledge and intention.</p> <p>Irrelevant – Defendant Kelly’s conduct in light of Plaintiff’s obstruction and noncompliance has no bearing on Plaintiff’s theory of liability against Defendant County.</p>
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67. The reporting process and follow up investigation was proper, thorough and followed LASD policies and procedures.

DISPUTED



Irrelevant – any miscommunication regarding an unrelated incident has no impact on whether Defendant Kelly received requisite LASD training.

Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or any other LASD personnel's knowledge and intention.

See Defendant's response to Plaintiff's Additional Facts 118-128

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	68. Defendant Kelly did not intend to use unreasonable or excessive force against Plaintiff at any point during the incident.	DISPUTED Defendant Kelly's use of pepper spray on Plaintiff was objectively unreasonable, excessive and inconsistent with generally accepted police practices. (See, Additional Fact 129) Defendant Kelly's punch to Plaintiff's face was objectively unreasonable, excessive and inconsistent with generally accepted police practices. (See, Additional Fact 138)	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's knowledge and intention.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	69. At no point during his encounter with Plaintiff did Defendant Kelly ever retaliate against Plaintiff for anything he said or did to Defendant Kelly or other LASD deputies, nor did I ever retaliate against Plaintiff for recording the incident.	DISPUTED Defendant Kelly retaliated against Plaintiff for trying to record the encounter on his mobile phone. (See, Additional Facts 108 and 109) Defendant Kelly retaliated against Plaintiff for requesting to speak to Defendant Kelly's supervisor. (See, Plaintiff's Additional Facts 112 and 113)	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's knowledge and intention.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	70. At no point during his encounter with Plaintiff were Defendant Kelly's actions due to racial animus or discriminatory motive.	DISPUTED Defendants Uncontroverted Fact 1; Plaintiff's Additional Facts 101-103, 148, 149-150, and 152-156	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's knowledge and intention. See Defendant's response to Plaintiff's Additional Facts 101-103, 148-150, and 152-156. Plaintiff cannot rely on his own allegations as evidence.
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1 2 3 4 5 6 7 8 9 10 11 12	71. Nor at any point during the encounter with Plaintiff did Defendant Kelly witness any other LASD deputy act out of racial animus or discriminatory motive, or otherwise conduct themselves unlawfully or unreasonably.	DISPUTED Plaintiff's Additional Fact 139	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or another LASD personnel's knowledge and intention. See Defendant's response to Plaintiff's Additional Facts 139.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	72. Defendant Kelly did not racially profile Plaintiff in initiating the traffic stop.	DISPUTED Defendants Uncontroverted Fact 1; Plaintiff's Additional Facts 101-103, 148, 149-150, and 152-156	Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or another LASD personnel's knowledge and intention. Plaintiff admitted at his deposition that Defendant Kelly had not seen him when he initiated the traffic stop. (See Exhibit H.) See Defendant's response to Plaintiff's Additional Facts 101-103, 148, 149-150, and 152-156
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<p>73. Furthermore, at no point during my interaction with Plaintiff did Defendant Kelly act with malice, oppression or in reckless disregard of Plaintiff's rights, nor did Defendant Kelly observe any other deputy act in such manner toward Plaintiff.</p>	<p>DISPUTED See, Plaintiff's Additional Facts 101-139</p>	<p>Lacks foundation - Plaintiff cannot competently testify to Defendant Kelly's or another LASD personnel's knowledge and intention.</p> <p>See Defendant's response to Plaintiff's Additional Facts 101-139.</p>
<p>74. On May 10, 2023, Plaintiff made an expert disclosure which attached an expert report which provided no facts, opinions or conclusions with respect to either Plaintiff's claims or allegations regarding unlawful arrest, <i>Monell</i> liability or punitive damages.</p>	<p>DISPUTED Mr. Nobel's report speaks for itself.</p>	<p>Mr. Nobel's report speaks for itself.</p> <p>Notably, Mr. Nobel did not provide a supportive declaration in opposition to this Motion to clarify his opinions or counter this contention.</p>

PLAINTIFF'S ADDITIONAL FACTS GIVING RISE TO TRIABLE ISSUES	DEFENDANTS' RESPONSE	PLAINTIFF'S RESPONSE
101. The light was green when Plaintiff made a legal right hand turn.	Irrelevant, immaterial. This fact does not defeat Defendant Kelly's observation, as contemporaneously noted in Exhibit "A" , Defendant Kelly's September 24, 2021 Incident Report, and as he declared.	
102. There were no pedestrians in the crosswalk when Plaintiff made a legal right hand turn.	Irrelevant, immaterial. This fact does not defeat Defendant Kelly's observation, as contemporaneously noted in Exhibit "A" , Defendant Kelly's September 24, 2021 Incident Report, and as he declared.	
103. There was not a smell of burnt marijuana emanating from Plaintiff's vehicle. It was 7:50 a.m. in the morning and Plaintiff, a college athlete, was on his way to	Irrelevant, immaterial. This fact does not defeat Defendant Kelly's observation, as contemporaneously noted	

1 2 3 4 5	basketball practice. Plaintiff did not smoke any marijuana on that morning. Plaintiff never smoked marijuana in his Vehicle.	in Exhibit “A” , Defendant Kelly’s September 24, 2021 Incident Report, and as he declared.	
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	104. Plaintiff was not agitated and his speech was not rapid.	Irrelevant, immaterial – Plaintiff’s subjective belief is irrelevant to the Court’s injury as to what a reasonable officer in Defendant Kelly’s position would have observed. The evidence speaks for itself. See Exhibit “A” , a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B” , a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage.	
25 26 27 28	105. Defendant Kelly did not request the driver’s license three times. The first claimed request was interrupted by cross-talk and never	Irrelevant, immaterial – Plaintiff’s subjective belief is irrelevant. Whether Plaintiff heard	

1 2 3 4 5 6 7 8 9 10 11 12 13 14	completed.	the request is immaterial to whether the request was communicated. The evidence speaks for itself. See Exhibit “A” , a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B” , a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage.	
15 16 17 18 19 20 21 22 23 24 25 26 27 28	106. Once Plaintiff was requested to produce his driver’s license for the first time, Plaintiff immediately complied and reached for his wallet.	Irrelevant, immaterial – Plaintiff never provided his driver’s license. See Exhibit “A” , a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B” , a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage.	

1 2 3 4 5 6 7 8 9 10 11 12 13	107. Even Defendant Kelly in his deposition conceded that Plaintiff was in the process of producing his driver's licenses when Defendant Kelly, not Plaintiff, re-engaged Plaintiff in the debate over the color of the light.	Irrelevant, immaterial – Plaintiff never provided his driver's license. See Exhibit "A" , a true and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also Exhibit "B" , a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage.	
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	108. Plaintiff stated his intention to record the interaction on his mobile phone after Defendant Kelly irrationally threatened to throw Plaintiff in jail 42 seconds into a traffic stop for a minor traffic infraction.	Irrelevant, immaterial – Plaintiff never provided his driver's license. See Exhibit "A" , a true and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also Exhibit "B" , a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage.	

1		Defendant Kelly never	
2		“irrationally threatened to	
3		throw Plaintiff in jail,” he	
4		warned that failure to	
5		comply with his requests	
6		would result in an arrest –	
7		which is a valid de-	
8		escalation tactic to gain	
9		compliance.	
10	109. Immediately after Plaintiff	Irrelevant, immaterial –	
11	stated his intention to record the	See Exhibit “A” , a true	
12	interaction on his mobile phone,	and correct copy of	
13	Defendant Kelly threw open the	Defendant Kelly’s	
14	door to Plaintiff’s vehicle and	September 24, 2021	
15	grabbed Plaintiff’s arm in an effort	Incident Report; see also	
16	to prevent Plaintiff from recording	Exhibit “B” , a true and	
17	the encounter.	correct copy of Defendant	
18		Kelly’s September 24,	
19		2021 BWC footage.	
20			
21		The evidence speaks for	
22		itself - Defendant Kelly	
23		opened Plaintiff’s driver’s	
24		door because Plaintiff	
25		began to reach towards	
26		the center console of the	
27		vehicle with his right	
28			

1		hand.	
2			
3	110. Plaintiff never kicked	Irrelevant, immaterial –	
4	Defendant Kelly.	Defendant Kelly felt a	
5		kick; whether Plaintiff	
6		intended to kick is	
7		irrelevant.	
8		See Exhibit “A” , a true	
9		and correct copy of	
10		Defendant Kelly’s	
11		September 24, 2021	
12		Incident Report; see also	
13		Declaration of Sergeant	
14		Kelly.	
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18	111. Defendant Kelly conceded in	Irrelevant, immaterial –	
19	his deposition the he did not see the	See Exhibit “A” , a true	
20	kick. His motorcycle pants were	and correct copy of	
21	thickly padded and it may have	Defendant Kelly’s	
22	been Plaintiff’s knee with which he	September 24, 2021	
23	came into contact.	Incident Report; see also	
24		Exhibit “B” , a true and	
25		correct copy of Defendant	
26		Kelly’s September 24,	
27		2021 BWC footage.	
28		Defendant Kelly felt a	

1		kick; whether Plaintiff	
2		intended to kick is	
3		irrelevant.	
4	112. After Defendant Kelly	Irrelevant, immaterial –	
5	threatened to pepper spray Plaintiff	See Exhibit “A” , a true	
6	only 73 seconds into a traffic stop	and correct copy of	
7	for a minor traffic infraction,	Defendant Kelly’s	
8	Plaintiff requested to speak with	September 24, 2021	
9	Defendant Kelly’s supervisor.	Incident Report; see also	
10		Exhibit “B” , a true and	
11		correct copy of Defendant	
12		Kelly’s September 24,	
13		2021 BWC footage.	
14			
15		See Fact No. 15 – Prior to	
16		deploying the pepper	
17		spray, Defendant Kelly	
18		ordered Plaintiff to	
19		exit the vehicle several	
20		times, and warned	
21		about the use of pepper	
22		spray if Plaintiff failed	
23		to comply. Instead of	
24		complying, Plaintiff	
25		continued to disobey	
26		Defendant Kelly.	
27			
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113. Defendant Kelly deployed the pepper spray in immediate response to Plaintiff's request to speak with Defendant Kelly's supervisor.

Speculative, lacks foundation – See **Exhibit “A”**, a true and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also **Exhibit “B”**, a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage.

See Fact No. 15 – Prior to deploying the pepper spray, Defendant Kelly ordered Plaintiff to exit the vehicle several times, and warned about the use of pepper spray if Plaintiff failed to comply. Instead of complying, Plaintiff continued to disobey Defendant Kelly.

Plaintiff cannot competently testify to

1		Defendant Kelly's	
2		knowledge and intention.	
3	114. Plaintiff did not punch Deputy	Irrelevant, immaterial –	
4	Clark in the chest.	Defendant Kelly saw	
5		Plaintiff punch Deputy	
6		Clark; whether Plaintiff	
7		intended to do so is	
8		irrelevant.	
9		See Exhibit “A” , a true	
10		and correct copy of	
11		Defendant Kelly's	
12		September 24, 2021	
13		Incident Report; see also	
14		Exhibit “B” , a true and	
15		correct copy of Defendant	
16		Kelly's September 24,	
17		2021 BWC footage.	
18			
19	115. Defendant Kelly in his	Irrelevant, immaterial –	
20	deposition conceded that he could	See Exhibit “A” , a true	
21	not see the punch on the video and	and correct copy of	
22	had trouble locating where in the	Defendant Kelly's	
23	video it allegedly occurred.	September 24, 2021	
24		Incident Report; see also	
25		Exhibit “B” , a true and	
26		correct copy of Defendant	
27		Kelly's September 24,	
28		2021 BWC footage.	

1		Defendant Kelly saw	
2		Plaintiff punch Deputy	
3		Clark; whether the body	
4		worn camera video	
5		depicts it is irrelevant.	
6			
7	116. Plaintiff merely passively	Contradictory – Plaintiff	
8	resisted the deputies’ efforts to	claims he was passive, but	
9	remove Plaintiff from his vehicle,	maintains that he “resisted	
10	while the two deputies pepper	efforts to remove” him	
11	sprayed, punched and choked	from his vehicle.	
12	Plaintiff.		
13		See Exhibit “A” , a true	
14		and correct copy of	
15		Defendant Kelly’s	
16		September 24, 2021	
17		Incident Report; see also	
18		Exhibit “B” , a true and	
19		correct copy of Defendant	
20		Kelly’s September 24,	
21		2021 BWC footage.	
22			
23		Plaintiff admitted he	
24		physically resisted	
25		Defendant Kelly’s every	
26		attempt to remove him	
27		from the vehicle. (See	
28			

	Exhibit H.)	
<p>117. After being removed from his vehicle, Plaintiff was not resisting. He was involuntarily thrashing about as a result of being pepper sprayed in the face and tased in the back. He did not kick or punch.</p>	<p>Irrelevant, immaterial – See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B”, a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage.</p> <p>Plaintiff can be seen continuing to physically resist efforts to handcuff him on the ground, requiring the use of a Taser deployment to gain compliance.</p>	
<p>118. Sergeant Kelly’s Failure to Use De-Escalation Techniques Was Inconsistent with Generally Accepted Police Practices</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion – See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see</p>	

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	<p>also Exhibit “B”, a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage. See also Defendants’ Motion in Limine No. 4, filed June 9, 2023.</p> <p>Defendant Kelly utilized de-escalation tactics, including verbal commands and warnings; before initiating physical contact with Plaintiff, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in an arrest; before using the pepper spray, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in the use of the pepper spray.</p>	
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2		Plaintiff is giving	
3		improper expert opinion.	
4	119. Police officers are taught that	Lacks foundation,	
5	it is generally preferable to avoid	improper legal	
6	conflict (i.e., conflict avoidance) or	conclusion, improper	
7	use communication skills to reduce	expert opinion –	
8	or resolve conflict (e.g., de-		
9	escalation) than it is to use force.	Evidence does not support	
10	Doing so increases both officer	the implication that	
11	safety and the safety of the	Defendant Kelly failed to	
12	individuals with whom officers are	“use communication	
13	interacting.	skills to reduce or resolve	
14		conflict.”	
15			
16		See Exhibit “A” , a true	
17		and correct copy of	
18		Defendant Kelly’s	
19		September 24, 2021	
20		Incident Report; see also	
21		Exhibit “B” , a true and	
22		correct copy of Defendant	
23		Kelly’s September 24,	
24		2021 BWC footage.	
25			
26		Defendant Kelly utilized	
27		de-escalation tactics,	
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	<p>including verbal commands and warnings; before initiating physical contact with Plaintiff, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in an arrest; before using the pepper spray, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in the use of the pepper spray.</p> <p>Plaintiff is giving improper expert opinion.</p>	
<p>120. De-escalation means taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>Evidence does not support the implication Defendant</p>	

1 compliance of subjects, when
2 feasible, and thereby reduce or
3 eliminate the necessity to use
4 physical force.

Kelly failed to “tak[e]
action to stabilize the
situation and reduce the
immediacy of the threat.”

5
6 See **Exhibit “A”**, a true
7 and correct copy of
8 Defendant Kelly’s
9 September 24, 2021
10 Incident Report; see also
11 **Exhibit “B”**, a true and
12 correct copy of Defendant
13 Kelly’s September 24,
14 2021 BWC footage.

15
16 Defendant Kelly utilized
17 de-escalation tactics,
18 including verbal
19 commands and warnings;
20 before initiating physical
21 contact with Plaintiff,
22 Defendant Kelly warned
23 Plaintiff that continued
24 failure to comply with
25 verbal commands would
26 result in an arrest;
27 Defendant Kelly opened
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	<p>Plaintiff’s driver because Plaintiff began to reach towards the center console of the vehicle with his right hand; before using the pepper spray, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in the use of the pepper spray.</p> <p>Plaintiff is giving improper expert opinion.</p>	
<p>121. Police officers are trained that de-escalation is accomplished through verbal persuasion; slowing down a situation allowing for more time, options and resources; avoiding or minimizing physical confrontation; maximizing tactical advantage by increasing distance to allow for greater reaction time; and the use of shielding, when possible, for cover and concealment.</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>Evidence does not support the implication Defendant Kelly failed to use “verbal persuasion.”</p> <p>See Exhibit “A”, a true</p>	

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	<p>and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also Exhibit "B", a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage. Defendant Kelly utilized de-escalation tactics, including verbal commands and warnings; before initiating physical contact with Plaintiff, Defendant Kelly warned Plaintiff that continued failure to comply with verbal commands would result in an arrest; Defendant Kelly opened Plaintiff's driver because Plaintiff began to reach towards the center console of the vehicle with his right hand; before using the pepper spray, Defendant Kelly</p>	
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1		warned Plaintiff that	
2		continued failure to	
3		comply with verbal	
4		commands would result in	
5		the use of the pepper	
6		spray.	
7			
8		Plaintiff is giving	
9		improper expert opinion.	
10	122. The Los Angeles Sheriff's	Lacks foundation,	
11	Department Policy states,	improper legal	
12	"Department members shall only	conclusion, improper	
13	use that level of force which is	expert opinion –	
14	objectively reasonable, and force		
15	should be used as a last resort.	Evidence does not support	
16	Whenever feasible, Department	the implication Defendant	
17	members should endeavor to de-	Kelly's conduct was	
18	escalate confrontations through	"objectively	
19	tactical communication, crisis	unreasonable" and that he	
20	intervention, advisements,	failed to attempt de-	
21	warnings, verbal persuasion, and	escalation "through	
22	other common-sense methods (such	tactical communication,	
23	as utilizing alternative tactics)	crisis intervention,	
24	which can prevent the need to use	advisements, warnings,	
25	force, or reduce the amount of	verbal persuasion, and	
26	force, that is required."	other common-sense	
27		methods (such as utilizing	
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	<p>alternative tactics).”</p> <p>See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B”, a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage.</p> <p>Plaintiff is giving improper expert opinion.</p>	
<p>123. Sergeant Kelly unnecessarily escalated the contact with Mr. Assiff creating the need to use force that would have likely not have been otherwise necessary.</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>Evidence does not support the implication.</p> <p>See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B”, a true and</p>	

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	<p>correct copy of Defendant Kelly’s September 24, 2021 BWC footage.</p> <p>Plaintiff’s conduct escalated from passive noncompliance to aggressive physical resistance before any use of force by Defendant Kelly.</p> <p>Plaintiff is giving improper expert opinion.</p>	
<p>124. Police officers are trained that they should strive to be courteous and professional during a traffic stop. Officers are trained that the attitude of the officer can affect the reaction of the driver and the outcome of a vehicle stop. Officers should make their approach in a businesslike manner while also employing verbal communication techniques. Flexibility and courtesy are important in making contact with the vehicle occupants.</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>Evidence does not support the implication Defendant Kelly’s conduct was not objectively “courteous and professional” under the circumstances.</p> <p>See Exhibit “A”, a true</p>	

1		and correct copy of	
2		Defendant Kelly's	
3		September 24, 2021	
4		Incident Report; see also	
5		Exhibit "B" , a true and	
6		correct copy of Defendant	
7		Kelly's September 24,	
8		2021 BWC footage.	
9			
10		Plaintiff is giving	
11		improper expert opinion.	
12	125. Police officers are trained that	Lacks foundation,	
13	a major goal of law enforcement is	improper legal	
14	to generate voluntary compliance	conclusion, improper	
15	without resorting to physical force.	expert opinion –	
16			
17		Evidence does not support	
18		the implication Defendant	
19		Kelly's conduct did not	
20		attempt to "generate	
21		voluntary compliance".	
22			
23		See Exhibit "A" , a true	
24		and correct copy of	
25		Defendant Kelly's	
26		September 24, 2021	
27		Incident Report; see also	
28			

1		Exhibit “B” , a true and	
2		correct copy of Defendant	
3		Kelly’s September 24,	
4		2021 BWC footage.	
5			
6		Plaintiff is giving	
7		improper expert opinion.	
8	126. Here, instead of simply telling	Lacks foundation,	
9	Mr. Assiff why he had been	improper legal	
10	stopped, Sergeant Kelly initiated	conclusion, improper	
11	the conversation by asking Mr.	expert opinion –	
12	Assiff the color of the light when he		
13	made his turn. When Mr. Assiff	Evidence does not support	
14	told Sergeant Kelly he believed the	the implication. See	
15	light was green, Sergeant Kelly told	Exhibit “A” , a true and	
16	Mr. Assiff to stop and extended his	correct copy of Defendant	
17	hand out to Mr. Assiff in a manner	Kelly’s September 24,	
18	consistent with telling Mr. Assiff to	2021 Incident Report; see	
19	stop talking and told Mr. Assiff that	also Exhibit “B” , a true	
20	he was “freaking out.” Mr. Assiff	and correct copy of	
21	tried to explain his perspective to	Defendant Kelly’s	
22	Sergeant Kelly and Sergeant Kelly	September 24, 2021 BWC	
23	told Mr. Assiff he was not going to	footage.	
24	talk. 37 seconds after his initial		
25	contact with Mr. Assiff, Sergeant	Plaintiff cannot speculate	
26	Kelly told him to provide his	that Defendant Kelly did	
27	driver’s license, or he would be	not attempt to	
28			

1	going to jail.	communicate the reason	
2		for the traffic stop and/or	
3		otherwise engage Plaintiff	
4		to de-escalate his	
5		noncompliance and	
6		resistance.	
7	127. Sergeant Kelly failed to take	Lacks foundation,	
8	basic reasonable steps to de-	improper legal	
9	escalate the situation before telling	conclusion, improper	
10	Mr. Assiff that he would be arrested	expert opinion –	
11	and using force to gain compliance.		
12	It is not unusual for motorist to	Evidence does not support	
13	question the reason for their stop	the implication. See	
14	and to spend a few minutes	Exhibit “A” , a true and	
15	explaining the reasons for the stop	correct copy of Defendant	
16	and de-escalating the situation to	Kelly’s September 24,	
17	gain voluntary compliance. Indeed,	2021 Incident Report; see	
18	the LAPD supervisor’s report states	also Exhibit “B” , a true	
19	that Sergeant Kelly was able to use	and correct copy of	
20	de-escalation skills to gain	Defendant Kelly’s	
21	voluntary compliance on the stop	September 24, 2021 BWC	
22	he made immediately prior to his	footage.	
23	stop of Mr. Assiff.	Plaintiff cannot speculate	
24		that Defendant Kelly did	
25		not attempt to	
26		communicate the reason	
27		for the traffic stop and/or	
28			

1		otherwise engage Plaintiff	
2		to de-escalate his	
3		noncompliance and	
4		resistance.	
5	128. Had Sergeant Kelly followed	Lacks foundation,	
6	generally accepted police practices	improper legal	
7	and his department policy and used	conclusion, improper	
8	de-escalation to gain voluntary	expert opinion –	
9	compliance, it is likely that no force		
10	would have been necessary.	See Exhibit “A” , a true	
11		and correct copy of	
12		Defendant Kelly’s	
13		September 24, 2021	
14		Incident Report; see also	
15		Exhibit “B” , a true and	
16		correct copy of Defendant	
17		Kelly’s September 24,	
18		2021 BWC footage; see	
19		also Declaration of	
20		Michael Gray; see also	
21		Defendants’ Motion in	
22		Limine #4 to exclude or	
23		limit testimony from	
24		Plaintiff’s expert, Jeffrey	
25		Nobel, filed on June 9,	
26		2023.	
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1		This is not a fact; rather,	
2		this is speculation based	
3		on a wholly incomplete	
4		hypothetical.	
5			
6		The expert opinion lacks	
7		sufficient evidentiary	
8		foundation, credibility, or	
9		evidence weighing	
10		opinions; the opinion is	
11		mere argument; opinions	
12		re: intent and motivation,	
13		etc. are not admissible.	
14		<i>See Federal Rules of</i>	
15		<i>Evidence</i> , Rules 401, 402,	
16		403, and 702.	
17			
18	129. Sergeant Kelly's Use of	Lacks foundation,	
19	Pepper Spray on Mr. Assiff was	improper legal	
20	Objectively Unreasonable,	conclusion, improper	
21	Excessive and Inconsistent with	expert opinion –	
22	Generally Accepted Police		
23	Practices	See Exhibit “A” , a true	
24		and correct copy of	
25		Defendant Kelly's	
26		September 24, 2021	
27		Incident Report; see also	
28		Exhibit “B” , a true and	

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	<p>correct copy of Defendant Kelly’s September 24, 2021 BWC footage; see also Declaration of Michael Gray; see also Defendants’ Motion in Limine #4 to exclude or limit testimony from Plaintiff’s expert, Jeffrey Nobel, filed on June 9, 2023.</p> <p>The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. See <i>Federal Rules of Evidence</i>, Rules 401, 402, 403, and 702.</p>	
<p>130. Police officers are trained that the U.S. Supreme Court in its landmark decision <i>Graham v. Connor</i> held that to determine</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p>	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	whether the force used to affect a particular seizure is reasonable, one must balance the nature and quality of the intrusion on the individual's rights against the countervailing government interests at stake. This balancing test is achieved by the application of what the Court labeled the objective reasonableness test. The factors to be considered include: 1.) The severity of the crime, 2.) Whether the suspect poses an immediate threat to the safety of the officers or others, and 3.) Whether the suspect is actively resisting or attempting to evade arrest by flight.	See Declaration of Michael Gray; see also Defendants' Motion in Limine #4 to exclude or limit testimony from Plaintiff's expert, Jeffrey Nobel, filed on June 9, 2023. The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. See <i>Federal Rules of Evidence</i> , Rules 401, 402, 403, and 702.	
22 23 24 25 26 27 28	131. Whether one's actions were objectively reasonable cannot be considered in a vacuum, but must be considered in relation to the totality of the circumstances. The standard for evaluating the unreasonable use of force reflects	Lacks foundation, improper legal conclusion, improper expert opinion – See Declaration of Michael Gray; see also	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<p>deference to the fact that peace officers are often forced to make split-second judgments in tense circumstances concerning the amount of force required. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.</p>	<p>Defendants’ Motion in Limine #4 to exclude or limit testimony from Plaintiff’s expert, Jeffrey Nobel, filed on June 9, 2023.</p> <p>The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. <i>See Federal Rules of Evidence</i>, Rules 401, 402, 403, and 702.</p>	
21 22 23 24 25 26 27 28	<p>132. Police officers are trained and prepared to assess dangerous situations and respond accordingly. Police officers are trained that for their force to be reasonable the level and manner of force must be proportional to the level of resistance and threat with which</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>See Declaration of Michael Gray; see also Defendants’ Motion in</p>	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	they are confronted. Proportionality is best understood as a range of permissible conduct based on the totality of the circumstances, rather than a set of specific, sequential, predefined force tactics arbitrarily paired to specified types or levels of resistance or threat.	Limine #4 to exclude or limit testimony from Plaintiff's expert, Jeffrey Nobel, filed on June 9, 2023. The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. See <i>Federal Rules of Evidence</i> , Rules 401, 402, 403, and 702.	
19 20 21 22 23 24 25 26 27 28	133. Whether or not the suspect poses an immediate threat to the safety of the officer or others is the most important of the Graham factors. There must be objective factors to justify an immediate threat, as a simple statement by an officer that he fears for his safety or the safety of others is insufficient. There is no requirement that a	Lacks foundation, improper legal conclusion, improper expert opinion – See Declaration of Michael Gray; see also Defendants' Motion in Limine #4 to exclude or limit testimony from	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<p>police officer wait until a suspect harms another to confirm that a serious threat of harm exists, but merely a subjective fear or a hunch will not justify the use of force by police.</p>	<p>Plaintiff's expert, Jeffrey Nobel, filed on June 9, 2023.</p> <p>The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. See <i>Federal Rules of Evidence</i>, Rules 401, 402, 403, and 702.</p>	
17 18 19 20 21 22 23 24 25 26 27 28	<p>134. When determining whether or not there is an immediate threat to the officer or others, police officers are trained to assess a number of factors. These factors include, but are not limited to:</p> <p>a. Severity of the threat to officers or others.</p> <p>b. The conduct of the individual being confronted as reasonably perceived by the officer at the time.</p> <p>c. Officer/subject factors (age, size,</p>	<p>Lacks foundation, improper legal conclusion, improper expert opinion –</p> <p>See Declaration of Michael Gray; see also Defendants' Motion in Limine #4 to exclude or limit testimony from Plaintiff's expert, Jeffrey Nobel, filed on June 9,</p>	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	relative strength, skill level, injury/exhaustion and number of officers vs. subjects). d. The effects of drugs or alcohol. e. Subject's mental state or capacity. f. Proximity of weapons or dangerous improvised devices. g. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained. h. reason for contact with the individual. j. Training and experience of the officer.	2023. The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. <i>See Federal Rules of Evidence</i> , Rules 401, 402, 403, and 702.	
18 19 20 21 22 23 24 25 26 27 28	k. Potential for injury to citizens, officers and suspects. l. Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer. m. The risk and reasonable foreseeable consequences of escape. n. The apparent need for immediate control of the subject or a prompt resolution of the situation.	Lacks foundation, improper legal conclusion, improper expert opinion – See Declaration of Michael Gray; see also Defendants' Motion in Limine #4 to exclude or limit testimony from Plaintiff's expert, Jeffrey	

1 2 3 4 5 6 7 8 9 10 11 12 13	o. Whether the conduct of the individual being confronted no longer reasonably appears to pose an immediate threat to the officer or others. p. Prior contacts with the subject or awareness of any propensity for violence. q. Other exigent circumstances	Nobel, filed on June 9, 2023. The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible. <i>See Federal Rules of Evidence</i> , Rules 401, 402, 403, and 702.	
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	135. Here, Sergeant Kelly said when he opened the driver's door of Mr. Assiff's vehicle, he grabbed Mr. Assiff's left wrist because he could not see where he was reaching to control him as he exited the vehicle. Sergeant Kelly said as soon as he grabbed Mr. Assiff's risk, Mr. Assiff aggressively pulled his arm away and kicked him in the left leg with his left foot. a. The video evidence from Sergeant Kelly's BWC contradicts his statement that Mr. Assiff kicked	Irrelevant, immaterial, lacks foundation, improper legal conclusion, improper expert opinion – See Exhibit "A" , a true and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also Exhibit "B" , a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage; see	

1 him.	also Declaration of	
2 b. Instead, the video shows	Michael Gray; see also	
3 Sergeant Kelly yelling at Mr. Assiff	Defendants' Motion in	
4 to "Give me your driver's license	Limine #4 to exclude or	
5 now or you're going to jail!" Mr.	limit testimony from	
6 Assiff immediately responds, "I'm	Plaintiff's expert, Jeffrey	
7 going to . . .bro, hold on bro, let me	Nobel, filed on June 9,	
8 get on my phone." Mr. Assiff	2023.	
9 appears to be holding his phone.		
10 Sergeant Kelly immediately opens	The expert opinion lacks	
11 the driver's door and tells Mr.	sufficient evidentiary	
12 Assiff to get out of the car.	foundation, credibility, or	
13 Sergeant Kelly appears to grab for	evidence weighing	
14 Mr. Assiff and Mr. Assiff screams,	opinions; the opinion is	
15 "Whoa, whoa, whoa," and leans	mere argument; opinions	
16 toward the passenger side of the	re: intent and motivation,	
17 vehicle as Sergeant Kelly backs	etc. are not admissible.	
18 away. Sergeant Kelly radios for a	<i>See Federal Rules of</i>	
19 back up officer and yells to another	<i>Evidence</i> , Rules 401, 402,	
20 deputy who is nearby. Sergeant	403, and 702.	
21 Kelly then again orders Mr. Assiff		
22 to exit the vehicle and tells him if		
23 he doesn't, he will get pepper		
24 sprayed. Mr. Assiff is holding his		
25 phone up apparently videotaping		
26 Sergeant Kelly and asks to speak		
27 with his supervisor. Sergeant Kelly		
28		

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<p>yells, “I am a supervisor,” and sprays Mr. Assiff with his OC spray in the face.</p> <p>c. Sergeant Assiff said he used his OC spray because Mr. Assiff reached toward the center console with his right hand and fearing that he may be retrieving a weapon, he sprayed a 1-2 second burst of his OC spray at Mr. Assiff’s face.</p> <p>d. The video shows both of Mr. Assiff’s hands just prior to Sergeant Kelly’s use of the OC spray and Mr. Assiff never reached for the center console as claimed by Sergeant Kelly.</p>		
18 19 20 21 22 23 24 25 26 27 28	<p>136. While Mr. Assiff was not complying with Sergeant Kelly’s commands he was not actively resisting, but merely passively resisting.</p> <p>a. Passive resistance is defined as “Does not respond to verbal commands but also offers no physical form of resistance.”</p> <p>b. Active resistance is defined as “Physically evasive movements to</p>	<p>Contradictory, irrelevant, immaterial, lacks foundation, improper legal conclusion, improper expert opinion – See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B”, a true and</p>	

1 defeat an officer's attempt at
2 control, including bracing, tensing,
3 running away, or verbally or
4 physically signaling an intention to
5 avoid or prevent being taken into or
6 retained in custody."

correct copy of Defendant
Kelly's September 24,
2021 BWC footage; see
also Declaration of
Michael Gray; see also
Defendants' Motion in
Limine #4 to exclude or
limit testimony from
Plaintiff's expert, Jeffrey
Nobel, filed on June 9,
2023.

The expert opinion lacks
sufficient evidentiary
foundation, credibility, or
evidence weighing
opinions; the opinion is
mere argument; opinions
re: intent and motivation,
etc. are not admissible.

*See Federal Rules of
Evidence*, Rules 401, 402,
403, and 702.

Both objective evidence
and Plaintiff's deposition
testimony establish that

1		Plaintiff was physically	
2		resisting Defendant Kelly	
3		and other deputies of the	
4		LASD during the subject	
5		incident. (Exhibit H , pp.	
6		124-138.)	
7			
8	137. Police officers are trained that	Lacks foundation,	
9	the use of OC spray for someone	improper legal	
10	engaging in passive resistance is	conclusion, improper	
11	excessive.	expert opinion –	
12		See Exhibit “A” , a true	
13		and correct copy of	
14		Defendant Kelly’s	
15		September 24, 2021	
16		Incident Report; see also	
17		Exhibit “B” , a true and	
18		correct copy of Defendant	
19		Kelly’s September 24,	
20		2021 BWC footage; see	
21		also Declaration of	
22		Michael Gray; see also	
23		Defendants’ Motion in	
24		Limine #4 to exclude or	
25		limit testimony from	
26		Plaintiff’s expert, Jeffrey	
27		Nobel, filed on June 9,	
28			

1		2023.	
2			
3		The expert opinion lacks	
4		sufficient evidentiary	
5		foundation, credibility, or	
6		evidence weighing	
7		opinions; the opinion is	
8		mere argument; opinions	
9		re: intent and motivation,	
10		etc. are not admissible.	
11		<i>See Federal Rules of</i>	
12		<i>Evidence</i> , Rules 401, 402,	
13		403, and 702.	
14			
15		Both objective evidence	
16		and Plaintiff's deposition	
17		testimony establish that	
18		Plaintiff was physically	
19		resisting Defendant Kelly	
20		and other deputies of the	
21		LASD during the subject	
22		incident. (Exhibit H , pp.	
23		124-138.)	
24			
25			
26	138. Sergeant Kelly and Deputy	Irrelevant, immaterial,	
27	Clark claimed that Mr. Assiff	lacks foundation,	
28	punched Deputy Clark in the chest	improper legal	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>and Sergeant Kelly said in response he punched Mr. Assiff in the face.</p> <p>a. The video evidence does not show Mr. Assiff punching Deputy Clark, or anyone else, during the incident and Mr. Assiff denied that he ever punched or kicked anyone.</p> <p>b. There is no legitimate police training that instructs officers to strike subjects in the head or face; indeed, police agencies commonly instruct officers to avoid such strikes unless circumstances justify the application of deadly force. Under some circumstances strikes to the head or face can be reasonably expected to risk of causing death or serious physical injury. There is a substantial likelihood, depending on the type of strike and where the strikes connect, that a strike will damage the eyes, nose, orbital bone, cheekbone, or jaw through blunt trauma; cause permanent scarring by, for example, tearing the skin or damaging the outer ear; cause a</p>	<p>conclusion, improper expert opinion –</p> <p>See Exhibit “A”, a true and correct copy of Defendant Kelly’s September 24, 2021 Incident Report; see also Exhibit “B”, a true and correct copy of Defendant Kelly’s September 24, 2021 BWC footage; see also Declaration of Michael Gray; see also Defendants’ Motion in Limine #4 to exclude or limit testimony from Plaintiff’s expert, Jeffrey Nobel, filed on June 9, 2023.</p> <p>The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation,</p>	
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<p>1 head to twist beyond normal</p> <p>2 rotation in a way that injures the</p> <p>3 cervical spine and or associated</p> <p>4 muscles; or cause an epidural</p> <p>5 hematoma, which can carry a</p> <p>6 substantial risk of death.</p> <p>7 Police officers in California are</p> <p>8 trained that serious bodily harm or</p> <p>9 injury means a serious impairment</p> <p>10 of physical condition, including,</p> <p>11 but not limited to, the following:</p> <p>12 loss of consciousness, concussion,</p> <p>13 bone fracture, protracted loss or</p> <p>14 impairment of function of any</p> <p>15 bodily member or organ, a wound</p> <p>16 requiring extensive suturing, and</p> <p>17 serious disfigurement.</p> <p>18 c. The use of a punch to the face in</p> <p>19 these circumstances was excessive,</p> <p>20 objectively unreasonable and</p> <p>21 inconsistent with generally</p> <p>22 accepted police practices.</p>	<p>etc. are not admissible.</p> <p><i>See Federal Rules of</i></p> <p><i>Evidence</i>, Rules 401, 402,</p> <p>403, and 702.</p> <p>Both objective evidence</p> <p>and Plaintiff's deposition</p> <p>testimony establish that</p> <p>Plaintiff was physically</p> <p>resisting Defendant Kelly</p> <p>and other deputies of the</p> <p>LASD during the subject</p> <p>incident. (Exhibit H, pp.</p> <p>124-138.)</p>	
<p>24 139. Deputy Clark said that he</p> <p>25 reached into the vehicle and</p> <p>26 attempted to wrap his right arm</p> <p>27 around Mr. Assiff's upper torso, but</p> <p>28 Mr. Assiff pulled his upper body</p>	<p>Irrelevant, immaterial,</p> <p>lacks foundation,</p> <p>improper legal</p> <p>conclusion, improper</p> <p>expert opinion –</p>	

<p>back into the passenger seat and as a result, his right arm slid up around Mr. Assiff's shoulders and neck. Deputy Clark said he did not apply pressure to Mr. Assiff's neck or attempt to apply a carotid restraint hold. Deputy Clark said he let go of Mr. Assiff's upper body and again tried to grab his left wrist and grabbed his hair in an attempt to pull him out of the vehicle.</p> <p>a. Deputy Clark's actions were captured by Mr. Assiff's cell phone video.</p> <p>b. While Deputy Clark claims he immediately released his neck hold, it appears that deputy Clark pulled Mr. Assiff from the vehicle by use of his neck hold.</p> <p>c. The use of a neck hold in these circumstances is excessive, objectively unreasonable and inconsistent with generally accepted police practices.</p>	<p>See Exhibit "A", a true and correct copy of Defendant Kelly's September 24, 2021 Incident Report; see also Exhibit "B", a true and correct copy of Defendant Kelly's September 24, 2021 BWC footage; see also Declaration of Michael Gray; see also Defendants' Motion in Limine #4 to exclude or limit testimony from Plaintiff's expert, Jeffrey Nobel, filed on June 9, 2023.</p> <p>The expert opinion lacks sufficient evidentiary foundation, credibility, or evidence weighing opinions; the opinion is mere argument; opinions re: intent and motivation, etc. are not admissible.</p> <p><i>See Federal Rules of</i></p>	
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1		<i>Evidence</i> , Rules 401, 402,	
2		403, and 702.	
3		Both objective evidence	
4		and Plaintiff's deposition	
5		testimony establish that	
6		Plaintiff was physically	
7		resisting Defendant Kelly	
8		and other deputies of the	
9		LASD during the subject	
10		incident. (Exhibit H , pp.	
11		124-138.)	
12			
13	140.	DISPUTED	
14		Irrelevant, immaterial,	
15		lacks foundation, hearsay,	
16		lacks authentication. See	
17		Defendants' Motion in	
18		Limine No. 1.	
19			
20	141.	DISPUTED	
21		Irrelevant, immaterial,	
22		lacks foundation, hearsay,	
23		lacks authentication. See	
24		Defendants' Motion in	
25		Limine No. 1.	
26			
27			
28	142.	DISPUTED	

1		Irrelevant, immaterial,	
2		lacks foundation, hearsay,	
3		lacks authentication. See	
4		Defendants' Motion in	
5		Limine No. 1.	
6			
7			
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9			
10	143.	DISPUTED	
11		Irrelevant, immaterial,	
12		lacks foundation, hearsay,	
13		lacks authentication. See	
14		Defendants' Motion in	
15		Limine No. 1.	
16			
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18			
19			
20	144.	DISPUTED	
21		Irrelevant, immaterial,	
22		lacks foundation, hearsay,	
23		lacks authentication. See	
24		Defendants' Motion in	
25		Limine No. 1.	
26			
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2	145.	DISPUTED	
3		Irrelevant, immaterial,	
4		lacks foundation, hearsay,	
5		lacks authentication. See	
6		Defendants' Motion in	
7		Limine No. 1.	
8			
9			
10			
11	146.	DISPUTED	
12		Irrelevant, immaterial,	
13		lacks foundation, hearsay,	
14		lacks authentication. See	
15		Defendants' Motion in	
16		Limine No. 1.	
17			
18		Improper conclusion of	
19		fact.	
20			
21		DISPUTED	
22		Irrelevant, immaterial,	
23		lacks foundation, hearsay,	
24		lacks authentication. See	
25		Defendants' Motion in	
26		Limine No. 1.	
27			
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	<p>DISPUTED</p> <p>Irrelevant, immaterial, lacks foundation, hearsay, lacks authentication. See Defendants' Motion in Limine No. 1.</p> <p>See also Declaration of Patrick Stockalper regarding improper and misleading factual representation by Thomas Ferlauto, Esq.</p>	

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	<p>DISPUTED</p> <p>Irrelevant, immaterial, lacks foundation, hearsay, lacks authentication. See Defendants' Motion in Limine No. 1.</p> <p>See also Declaration of Patrick Stockalper regarding improper and misleading factual representation by Thomas Ferlauto, Esq.</p>	

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<p>150. </p>	<p>DISPUTED</p> <p>Irrelevant, immaterial, lacks foundation, hearsay, lacks authentication. See Defendants' Motion in Limine No. 1.</p> <p>See also Declaration of Patrick Stockalper regarding improper and misleading factual representation by Thomas Ferlauto, Esq.</p>	

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3	151.	DISPUTED	
4		Irrelevant, immaterial,	
5		lacks foundation, hearsay,	
6		lacks authentication. See	
7		Defendants' Motion in	
8		Limine No. 1.	
9			
10			
11			
12	152. The incident that is the subject	Contradictory, irrelevant,	
13	matter of this lawsuit happened	immaterial, lacks	
14	while Plaintiff was traveling to the	foundation, improper	
15	Antelope Valley. However, it	legal conclusion,	
16	occurred in Santa Clarita, in a	improper expert opinion –	
17	northern part of the County, but just	Irrelevant, immaterial.	
18	one Sheriff's Department station	Plaintiff concedes the	
19	adjacent to but south of the actual	incident did not occur in	
20	Antelope Valley.	Antelope Valley.	
21		Plaintiff's intended	
22		location at the time of the	
23		traffic stop is irrelevant.	
24		Plaintiff concedes the	
25		incident did not occur in	
26		the Antelope Valley, but	
27		rather at a location	
28			

1		approximately 45 minutes	
2		driving distance away.	
3		(Exhibit H , pp. 97-98.)	
4	153. The Los Angeles County	Contradictory, irrelevant,	
5	Sheriff's Department has a long and	immaterial, lacks	
6	sordid history of racial profiling	foundation, improper	
7	and discriminatory traffic stops,	legal conclusion,	
8	particularly in the County's	improper expert opinion –	
9	northern stations, such as the	Lacks foundation;	
10	Antelope Valley. For years, black	improper conclusion of	
11	and Latino residents in the	law.	
12	Antelope Valley complained they	Moreover, Plaintiff	
13	were the victims of racially biased	concedes the incident did	
14	stops and searches along with other	not occur in Antelope	
15	mistreatment by Los Angeles	Valley. Plaintiff's	
16	County Sheriff's deputies. In 2013,	intended location at the	
17	the US Department of Justice, Civil	time of the traffic stop is	
18	Rights Division analyzed Sheriff's	irrelevant.	
19	Department data from tens of	Plaintiff concedes the	
20	thousands of vehicle and pedestrian	incident did not occur in	
21	stops, interviewed hundreds of	the Antelope Valley, but	
22	people and reviewed volumes of	rather at a location	
23	internal sheriff's documents, and	approximately 45 minutes	
24	after this thorough analysis the	driving distance away.	
25	Department of Justice "found that	(Exhibit H , pp. 97-98.)	
26	LASD's Antelope Valley stations		
27	have engaged in a pattern or		
28			

1 2 3 4 5 6 7 8 9 10 11	practice of discriminatory and otherwise unlawful searches and seizures, including the use of unreasonable force, in violation of the Fourth Amendment, the Fourteenth Amendment, and Title VI.” The findings forced the county to reach a legal settlement with federal authorities in 2015 that called for significant reforms and continued oversight.		
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	154. However, despite all of this, the racial profiling and discriminatory traffic stops persist, as evidenced by continued gross racial disparities. An NCCD report from 2020 found on the Sheriff’s Department’s own website entitled, “An Analysis of Racial/Ethnic Disparities in Stops by Los Angeles County Sheriff’s Deputies in the Antelope Valley” the report found that Black drivers make up 32% of all traffic stops even though they account for only 17% of the population. The report also found that black drivers once stopped	Contradictory, irrelevant, immaterial, lacks foundation, improper legal conclusion, improper expert opinion – Lacks foundation; improper conclusion of law. Moreover, Plaintiff concedes the incident did not occur in Antelope Valley. Plaintiff’s intended location at the time of the traffic stop is irrelevant. Plaintiff concedes the	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	were more likely to have both their vehicle and their persons searched, more likely to experience backseat detentions, and more likely to be asked if they are on probation or parole. All this is in spite of the fact that black drivers have a much lower contraband discovery rate (15.4%) than either their white or Hispanic counterparts (24.4% and 22.3% respectfully). This problem with racial profiling and discriminatory traffic stops in the Antelope Valley is not an isolated single incident, but rather a persistent and ongoing problem with the Los Angeles County Sheriff's Department recognized by the US Department of Justice, Civil Rights Division.	incident did not occur in the Antelope Valley, but rather at a location approximately 45 minutes driving distance away. (Exhibit H, pp. 97-98.)	
22 23 24 25 26 27 28	155. The racial disparities also existed in those suspicious use of force incidents (such as the incident between Plaintiff and Defendant KELLY) where a suspect was charged with only resisting arrest or obstructing an officer but no other	Contradictory, irrelevant, immaterial, lacks foundation, improper legal conclusion, improper expert opinion – Lacks foundation;	

<p>1 crimes. U.S. Department of Justice, 2 Civil Rights Division found as 3 follows: “Perhaps most strikingly, 4 we found that 81% of the uses of 5 force we reviewed where the only 6 charge was obstruction-related 7 involved targets who were African 8 American or Latino. For the 25 9 felony obstruction-only arrests, 10 88% involved victims who were 11 people of color. This is an 12 extraordinarily disproportionate 13 number of obstruction charges 14 involving use of force against 15 people of color and warrants close 16 attention by the Department. See, 17 Arlington Heights, 429 U.S. at 266 18 (intent may be established by "clear 19 pattern, unexplainable on grounds 20 other than race").”</p>	<p>improper conclusion of law. Moreover, Plaintiff concedes the incident did not occur in Antelope Valley. Plaintiff’s intended location at the time of the traffic stop is irrelevant. Plaintiff concedes the incident did not occur in the Antelope Valley, but rather at a location approximately 45 minutes driving distance away. (Exhibit H, pp. 97-98.)</p>	
<p>22 156. The US DOJ’s findings and 23 the findings of the Sheriff’s 24 Department’s own oversight 25 monitors show that the 26 unconstitutional racial profiling and 27 discriminatory traffic stops in the 28 northern parts of the Sheriff’s</p>	<p>Contradictory, irrelevant, immaterial, lacks foundation, improper legal conclusion, improper expert opinion – Moreover, Plaintiff concedes the incident did</p>	

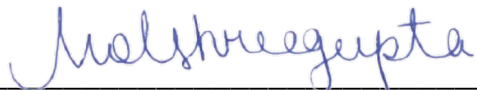
1 Department's jurisdiction, as well
2 as the County's supervision,
3 training, retention, promotion and
4 rewarding of violent and abusive
5 deputies such as Defendant Kelly
6 reflect the County's unwritten
7 policies, customs, practices and
8 usages in violation of the Fourth
9 and Fourteenth Amendment
10 respectively to the United States
11 Constitution, which policies,
12 customs, practices, and usages
13 resulted in Plaintiff's injury and the
14 County's *Monell* liability.

not occur in Antelope
Valley. Plaintiff's
intended location at the
time of the traffic stop is
irrelevant.
Plaintiff concedes the
incident did not occur in
the Antelope Valley, but
rather at a location
approximately 45 minutes
driving distance away.
(**Exhibit H**, pp. 97-98.)

15
16 Dated: June , 2023

KJAR, MCKENNA & STOCKALPER, LLP

17
18
19 By:



PATRICK E. STOCKALPER

MOLSHREE GUPTA

Attorneys for Defendants,

COUNTY OF LOS ANGELES and DEPUTY

TRAVIS KELLY

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On June 12, 2023, I served the foregoing document described as **DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO STATEMENT OF PURPORTED UNCONVERTED FACTS AND CONCLUSION OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX By Email Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX State I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 12, 2023, at El Segundo, California.



Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAX)

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